

**LEGISLATIVE SERVICES AGENCY
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FISCAL IMPACT STATEMENT

LS 6100

BILL NUMBER: SB 35

NOTE PREPARED: Feb 27, 2003

BILL AMENDED: Feb 20, 2003

SUBJECT: Tort Claims Against Government Entities.

FIRST AUTHOR: Sen. Meeks R.

FIRST SPONSOR: Rep. Avery

BILL STATUS: As Passed - Senate

FUNDS AFFECTED: X **GENERAL**
DEDICATED
FEDERAL

IMPACT: State & Local

Summary of Legislation: This bill increases the cap on damages for tort claims against government entities and public employees.

Effective Date: July 1, 2003.

Explanation of State Expenditures: (Revised) This bill: (1) increases the per person amount payable from the Political Subdivision Risk Liability Fund for liability, and (2) increases the combined per person liability of all governmental entities and public employees acting within the scope of their employment. It is estimated that increasing the per person claim limit for state entities could potentially increase the state's annual tort claim liability. The increase could range up to approximately \$1.1 M in CY 2005 and CY 2006; and an estimated \$1.7 M in CY 2007. However, the total additional cost to the state is unknown and subject to judicial action.

(1) The Political Subdivision Risk Liability Fund (Basic) currently does not have any member governmental entities. The fund is established to pay a part of certain liabilities of members of the fund. The fund currently pays a maximum of \$300,000 for injury, death, or damage suffered by any one person as a result of the act or omission from which the liability arises. The current maximum paid for all injury, death, or damage suffered by all persons as a result of the act or omission from which the liability arises is \$1 M. This bill increases the per person liability to \$750,000 for CY 2005 and CY 2006 and to \$1.0 M in CY 2007 and beyond. The total impact this bill has on expenditures from the fund cannot be estimated at this time and is contingent upon the fund having active members.

Political Subdivision Risk Liability Fund Background: The Basic Fund does not currently have any members and was suspended by the Department of Insurance in 1999. The Basic Fund paid a total of \$5,607 in claims for 1998. The Basic Fund pays all liability claims incurred by members, less a deductible. The deductible varies by member and is determined by the fund administrator and member agreement. Basic Fund members may also enroll in the Political Subdivision Catastrophic Liability Fund. The Catastrophic Fund pays a portion of member liability up to \$5 M. Total investments for both the Basic and Catastrophic fund are approximately \$6 M, in addition to a \$350,000 cash balance.

(2) This bill will potentially increase the per person liability awards that governmental entities would pay as a result of successful lawsuits filed against the state and political subdivisions of the state and public employees. Under current law, damage awards cannot exceed \$300,000 for the injury to, or death of, one person in any one occurrence. This bill increases the per person liability to \$750,000 for CY 2005 and CY 2006 and to \$1 M in CY 2007 and beyond.

However, this bill does not increase the total liability per occurrence. The per occurrence liability remains \$5 M. Thus, expenditures on a per person basis may increase, however, the total liability per occurrence remains constant. Based upon certain assumptions (see background section below) the state liability for tort cases may increase by up to an estimated \$1.1 M in CY 2005 and CY 2006; and \$1.7 M per year after January 1, 2007. However, the total additional cost to the state is unknown and subject to judicial action. It is important to note that the number of large state tort settlements has decreased over the past seven years. If this trend continues, the total state tort liability may be lower than estimated.

Governmental Unit Liability Background Information: Between FY 1996 and FY 2002, the state paid 18 tort claims valued between \$250,000 and \$300,000. Since these settlements were near the limit for tort claims paid by the state, it was assumed that these claims *might* be higher if the settlement cap were raised to \$1,000,000. The average settlement from these 18 cases equaled approximately 95.1% of the \$300,000 limit. The analysis assumed that if the cap were raised, this group of claims would be paid a similar percentage of the \$750,000 limit (for 2005 through 2006) or \$1,000,000 limit (after 2006). This analysis did not assume that increasing the limit would cause a greater number of tort claims to be paid by the state.

It should be noted that the number and severity of claims paid by the state will vary from year to year. The Office of the Attorney General reports the amount of damages paid as a result of tort claims submitted and tort claim lawsuits filed against the state and by plaintiffs in tort and civil rights litigation in FY 2002 as approximately \$3.3 M.

Explanation of State Revenues: The Department of Insurance administers the Political Subdivision Risk Liability Fund. This bill may result in requiring participating governmental entities to pay more into the Political Subdivision Risk Liability Fund. If total payments from the fund exceed total available balance in the fund, the members may be required to pay an additional assessment to pay these liabilities and replenish the fund.

Explanation of Local Expenditures: (Revised) This bill could increase the per person damage awards that local entities would be required to pay as a result of a successful lawsuit. Under current law, damage awards cannot exceed \$300,000 for the injury to, or death of, one person in any single occurrence. This bill will raise the maximum award for the injury or death to one person from \$300,000 to \$750,000 for CY 2005 and CY 2006 and to \$1 M in CY 2007 and beyond. However, this bill does not increase the total liability per occurrence. The per occurrence liability remains \$5 M. Total tort settlements for local units is not known. The total additional cost to local units is unknown and subject to judicial action.

This bill may result in requiring participating governmental entities to pay more into the Political Subdivision Risk Liability Fund. If total payments from the fund exceed total available balance in the fund, the members may be required to pay an additional assessment to pay these liabilities and replenish the fund.

Explanation of Local Revenues:

State Agencies Affected: Department of Insurance; Office of the Attorney General.

Local Agencies Affected: All.

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